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In the Supreme Court of the United States

OCTOBER TERM, 1968.

No. 259.

JAMES A. RHODES, etc. *et al.*,
Petitioners,

vs.

NATHANIEL BUCHANAN, *et al.*,
Respondents.

MEMORANDUM BY RESPONDENTS WITH REGARD TO PETITION FOR WRIT OF CERTIORARI.

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Because of the importance of the subject matter involved in this action, Respondents do not choose to oppose the Petition that has been filed for the issuance of a Writ of Certiorari. This case involves the authority of the Federal Courts to review and remedy apportionment of judges in the State Courts, where the apportionment established by State law contravenes the Due Process and Equal Protection clauses of the Fourteenth Amendment.

Following the dismissal of this action by the United States District Court for the Northern District of Ohio, and the refusal by that Court to convene a statutory three-judge court, Respondents sought review of that decision in this Court by direct appeal. In *Buchanan v. Rhodes*, 385 U. S. 3 (1966), this Court dismissed the appeal, apparently finding that this Court did not have appellate jurisdiction to review the District Court's action. Citing that decision, this Court subsequently expressly held that

such review is properly available in the Court of Appeals. *Schackman v. Arnebergh,* 387 U. S. 427 (1967).

An appeal was therefore prosecuted to the Federal Court of Appeals for the Sixth Circuit which reversed the District Court's action and remanded the case for the convening of a three-judge court. In so doing, the Court's action was consistent with the decision of this Court in *Idlewild v. Epstein,* 370 U. S. 713 (1962). In that case, the opinion states at 370 U. S. 715:

> "When an application for a statutory three-judge court is addressed to a District Court, the Court's inquiry is appropriately limited to determining whether the Constitutional question raised is substantial, whether the complaint at least formally alleges a basis for equitable relief, and whether the case presented otherwise comes within the requirements of the three-judge statute."

Applying those standards, the Court of Appeals remanded the case to convene a three-judge court as requested by plaintiffs.

While the various reapportionment cases previously considered by this Court have not involved judicial apportionment, other courts have been concerned with that subject. Thus, in *Romiti v. Kerner,* 256 F. Supp. 35 (E. D. Ill. 1966), the district court did assemble a three-judge court to consider an alleged mal-apportionment of the Supreme Court of Illinois. In *Kail v. Rockefeller,* Civil No. 65-205 (E. D. N. Y. 1966) the district court did assemble a three-judge court to consider a claim of mal-apportionment of the New York State trial judges. In *New York Trial Lawyers Ass'n v. Rockefeller,* 267 F. Supp. 148 (S. D. N. Y. 1967), the District Judge refused to assemble a three-judge court to review substantially the same claims of mal-apportionment in New York. And in

Stokes v. Fortson, 234 F. Supp. 575 (N. D. Ga. 1964), the district court approved the convening of a three-judge court to review claims of Fourteenth Amendment violations in the election of the Georgia judiciary.

Petitioners in the present case assert that the district courts of the United States generally lack jurisdiction to entertain actions of this nature. While we believe that the district courts can and should be concerned with the apportionment of the state judiciary, we recognize that the problem extends far beyond the City of Cleveland and the State of Ohio. Judicial delay is perhaps the most grievous problem facing the administration of justice today. The problem is particularly acute in the larger metropolitan areas. Therefore, to the extent that this widespread problem involves federal Constitutional questions, any doubt as to the jurisdiction of the district courts nationally to review such questions should be resolved. Further, in the interest of conserving judicial time and energies, this Court may well wish to set forth certain basic guidelines for use in such litigation in the district courts.

CONCLUSION.

For the above reasons, Respondents acquiesce in the Petition filed seeking a Writ of Certiorari from this Court.

Respectfully submitted,

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